

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JACOYA SHATRICE HUFF,
MARKETEA LEA HUFF, and CELESTE LEE
LEWIS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LEONARD LEWIS,

Respondent-Appellant,

and

LACOYA SIMONE HUFF,

Respondent.

UNPUBLISHED

November 25, 2003

No. 245480

Wayne Circuit Court

Family Division

LC No. 00-386965

Before: Cooper, P.J., and Markey and Meter, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to his daughter Celeste under MCL 712A.19b(3)(h). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Initially, respondent-appellant argues that he was denied due process because he was unable to meaningfully participate in the termination proceedings when his speakerphone connection was inadvertently interrupted for twenty minutes. Respondent-appellant was unable to appear in person at the hearing because he was incarcerated after having been convicted of second-degree murder and sentenced to serve twelve to twenty years in prison. Respondent-appellant did not raise this due process issue below and, therefore, has not preserved it for appellate review. Pursuant to *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999), unpreserved, constitutional error merits reversal only if it was “a plain error that affected substantial rights.” To show that substantial rights were affected, respondent-appellant must show “prejudice, i.e., that the error affected the outcome of the lower court proceedings.” *Id.* at 763.

Because respondent-appellant cannot show that he was prejudiced by the events that transpired, reversal of the termination of parental rights on this due process grounds is unwarranted. While it is true that respondent-appellant was unable to participate in the proceedings for twenty minutes, the majority of the evidence taken in his telephonic absence related to the conduct of the child's mother. To the extent that respondent-appellant missed evidence presented against him, it must be noted that during his absence respondent-appellant was fully represented by counsel, and upon his return to the phone was promptly apprised of the testimony he missed. Further, respondent-appellant had ample opportunity to rectify any prejudicial impact caused by his absence but took no action. Indeed, both he and his counsel appeared satisfied at the time that the situation had been fully rectified. Even now on appeal, knowing the exact testimony that was given, respondent-appellant does not offer any example of how he could have meaningfully aided his attorney during the examination of the foster care worker. Simply put, respondent-appellant has not demonstrated that the alleged error affected the outcome of the hearing. Therefore, reversal is not required. *Id.* at 763-64.

Additionally, the trial court did not clearly err in finding that the statutory ground for termination was established by clear and convincing evidence. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Given the length of respondent-appellant's sentence and the nature of his crime, there is no reasonable probability that he will be released soon enough to provide a normal home for his daughter. Further, respondent-appellant did not present a plan for the care of his child during or after his incarceration. Because at least one ground for termination was established, the trial court was required to terminate respondent-appellant's parental rights unless the trial court found that termination was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000). The trial court's finding regarding the child's best interests in this case was not clearly erroneous. *Trejo*, *supra* at 364-365.

Affirmed.

/s/ Jessica R. Cooper
/s/ Jane E. Markey
/s/ Patrick M. Meter